IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9485 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANGARAM MOTIRAM CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAY BHATT, Ld. AGP for Respondents

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/10/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 3rd July, 2000 (Annexure - A) passed by respondent No.2 with respect to detenue - Gangaram Motiram Chaudhari in exercise of his powers conferred upon him under section 3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short "the Act").

2. As per the papers of grounds of detention, the petitioner-detenu is "a bootlegger" within the meaning of section 2(b) of the Act, and that activities of the petitioner are prejudicial to the maintenance of the public health.

3. Before passing an order of detention, for arriving at a subjective satisfaction, the detaining authority has placed reliance on seven Prohibition Cases lodged against the petitioner - detenu, which are referred to in the grounds of detention. The detaining authority passed an order of detention on 03/07/2000 which is challenged in this writ petition.

4. Though rule has been served upon each respondent, none of the respondents has filed affidavit-in-reply in reply to this petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Ms.Subhadraben Patel, learned advocate for the petitioner has argued that in this case, the detaining authority has taken into consideration the less drastic remedy under section 57(c) of the Bombay Police Act. The detaining authority ought not to have taken into consideration this section 57(c) of the Bombay Police Act because, the petitioner must have been convicted in atleast two cases. Ms.Subhadraben Patel, learned advocate for the petitioner has cited an authority of JAYANTI NENUMEL RAMNANI vs. COMMISSIONER OF POLICE, RAJKOT, reported in 2000 (2) GLR 116, wherein it has been held that there is no question for considering less drastic remedy when it was not available to the detaining authority for passing an order of detention. Therefore, this fact itself shows non-application of mind on the part of the detaining authority. This present case squarely falls within the four corners of aforesaid case cited by Ms.Patel.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 3rd July, 2000 passed by respondent No.2 with respect to detenu is set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case of proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta, J.)

(vrpanchal)*